

and said that I was still the winner. That was six months long. He appealed it again... and I won it again. He appealed it a third time.

See, the FCC had formed some kind of a group at that time, and this was supposed to make the process easier because then it wouldn't have to go back to the FCC. Well, it did. It went through that group, and I was the winner. He appealed it back again to the FCC, and I was the winner. He did appeal it one more time, and then they said I was the winner. And in order for me to get that license on the air and to even try to get more funding, because now we had used almost all . . . of our funding . . . for attorneys, for engineers, for trips, all the research and everything else that we did. So we had used quite a bit of funding, and we were still pouring money out of our pockets. This was all out of pocket. (FRienstra360, pp. 1,6-13)

(h) Repeal of the Tax Certificate

The 1978 Broadcast Policy Statement created the tax certificate program which provided tax benefits to the seller of a media property if it was sold to a minority business. The tax certificate policy encouraged and promoted minority ownership by giving a two-year like-kind transfer tax break (a deferral) for the sale of licenses to minorities if the proceeds were reinvested in a similar communication industry. In 1995, as part of the Self-Employed Persons Health Care Deduction Extension Act, Congress repealed the tax certificate program because of alleged abuse .

This tax certificate program was the single most effective program in lowering market entry barriers and providing opportunities for minorities to acquire broadcast licenses in the secondary market. Virtually every minority broadcaster with whom we spoke commented on the program's effectiveness and recommended its reinstatement as a means to increase opportunities for minority ownership. While it did not guarantee that transactions would be consummated, the tax certificate program did motivate sellers to seek out and offer an increased number of broadcast properties for sale to minorities.

Bernadine Nash, a minority daytime-only AM radio station owner in Boston, summed up the benefits of the program and the negative impact of its repeal.

The biggest blow for us, really, has been the dissolution of the minority tax certificate. Because ...when the minority tax certificate was in existence, I actually had people approach me when they wanted to sell their radio stations because there were significant tax breaks to be derived from it. When that went away, not only did I not get phone calls, I couldn't get phone calls returned when I was inquiring about properties. I've been trying like crazy and have hit, I can't tell you how many, brick walls, and have come to the realization that in this market it is not going to happen within the framework that I imagined that it would. (BNash118, pp. 7-8)

Dorothy Brunson, an African-American UHF licensee explained the economic benefit of the program to the buyer.

It lowered the [purchase price]. . . . Because what happened, if you needed that crucial 20% down payment, and you only had 5%, if you got a tax certificate, and that person was able to defer those capital gains of 17 or 18 percent of tax on that money, they would then be willing to give you maybe a 10% swing [on the price of the station]. Or even 12%, if it was big enough. And that 12%, with your 5%, well, they'd give you a 20% push to be able to pull that deal out, so if you can now get 15 times cash flow [in financing], you're going to be able to manage that, because you've already got a 20% equity stake. (DBrunson105, p. 25)

Amador Bustos, who was quoted earlier on the ineffectiveness of the comparative hearing process, said that “(t)he only thing that was effective was the tax certificate [because it] allowed minorities, as in our case, access to get some property that we would not otherwise get, because the seller was motivated by the fact that they could defer the tax for a period of time. (ABustos122, p. 12)

Dorothy Brunson, who commented that “it was a travesty when the Congress overruled the Commission on the tax certificates,” provided some statistics on the program’s success.

(I)f you go back and look at the number of cases where I went back and I believe it was 1997, '96, you probably had about oh, I would say close to 250 properties that were owned by African-Americans, maybe with Hispanics with the radio stations and one or two TV stations in the West, we were looking at probably about 315 properties. Out of that 300, probably better than about 100, 150, were based on tax certificates.

You have to look at some of the historical research. It was tremendous. Yeah, there were some who came in and got out, bought with tax certificates, turned around and sold [the stations]; but you're always going to have somebody who's going to abuse the system, but you don't throw the baby out with the bath. But it could have been better done if the tax certificates were regulated, and all they had to do was put a clause in that the persons who had the tax certificates, would a) have to hold [the station] for a minimum of two years, or three years and/or b) [the FCC] could have limited them - they (could) say no tax certificates over \$300,000 or \$400,000 or whatever, you know. But, not to just kill the whole program. (DBrunson105 p. 24)

Henry Rivera’s perspective that the repeal of the tax certificate was “devastating” to minorities was shared by many.

I think in terms of things that have happened to the minority community, clearly one of the most devastating has to have been the repeal of the Tax Certificate. I mean when we lost that, we really did lose a terrific vehicle toward increasing minority ownership. That was devastating. (HRivera516, p. 12)

(i) Auctions

The Omnibus Budget Reconciliation Act of 1993 (which added Section 309(j) to the Communications Act of 1934) gave the FCC authority to distribute licenses through a competitive bidding process, or auctions. Initially the auctions were used only for wireless licenses. The first broadcast auction, the “Bechtel auction”, took place in 1999.

The most significant difference between the auctions and the previous means of distributing licenses (comparative hearings and lotteries) is that now successful applicants, as a result of the auction bidding process, are required to pay tens and often hundreds of thousands of dollars to the FCC for each license awarded to them. The FCC at one time allocated the spectrum to qualified applicants without receiving any compensation from the applicants, now the prospective licensee with the deepest pockets wins.

For already capital-deficient small, minority- and women-owned businesses, the huge sums of money needed to both acquire the licenses and build out the systems has created an enormous barrier to entry.

To help counter the financial impact of the auctions, the FCC originally created bidding credits and later favorable financing for small businesses, with additional credits being given to minority- and women-owned businesses. The FCC set the C and F blocks of PCS spectrum aside as entrepreneur blocks with the expectation, at least with the C-block auction, that small businesses would get a head start in the market with PCS service over the larger telephone service providers who were scheduled to bid for their licenses in the subsequent A- and B-block auctions.

Unfortunately, the decision in the Adarand case prompted the FCC not only to delay the C-block auction beyond the date of the A- and B-block auctions but also to remove any special credits that had been available for minorities and woman and to extend those credits to all small businesses participating in the auction.

The delay in timing of the C-block auction, coupled with the loss of minority and women bidding credits, impaired bidding strategies, pricing estimates, and ultimately limited the opportunities for small, minority-, and women-owned businesses to get financing, meet their installment payments, and build out their systems.

But more than anything, most interviewees who offered an opinion about the auction process indicated that, because of the capital requirements of the process, small business owners would be shut out of the process and relegated, if given a chance at all, to the least desirable and therefore most affordable spectrum. Carl Davis, a wireless licensee characterized the FCC as “a money-grubbing organization” which “isn’t fair any longer.” (CDavis322, p. 27)

Brian Cobb, a media broker had this perspective on the auction process:

. . . (T)he bulk of [the wireless spectrum] is being provided to whoever pays the most money. But . . . the system got perverted when [the FCC] got greedy and started selling to the highest bidder, so all they are doing is turning over all the frequency to the largest corporations in the country. That's what's happening. I call it corporate socialism, because I'm a big fan of small business. (BCobb512, p. 32)

Toni Cook Bush sees the auction authority as one which now drives and defines choices made by people at the FCC. *"The bottom line that I figured out from at least some of the conversations that I've had at the Commission is that they really do just want to raise money, and they view their job just to try to figure out ways to get [companies] into an auction."* (TBush378, p. 27)

Henry Rivera sees it this way:

The Administration . . . and the Congress like the fact that there's money being generated out of something that the Commission is doing and the Commission likes that. So, they like to be patted on the back and given attaboys and attagirls and you guys are doing a great job and you're raising all this money for the Treasury and we think you're great. . . . [But] that's the ball they tend to keep their eye on rather than, you know, what can we do about helping minorities? What can we do about fostering new technology . . . but I think that their mind is not necessarily on advancing the public interest as much as it should be but rather [on] how much money can we generate from this particular auction. (HRivera516, p. 21)

Brian Cobb asks a more fundamental question about the rationale behind the auction process.

They haven't had a very viable solution yet [for issuing licenses]. . . . They tried to set rules that said, okay, if a minority is involved then they get favoritism or if there is more localism. . . . So then in the [comparative hearing] process everybody was trying to eat each other, and they got tied up for years and years and years. That wasn't very good. And so the ultimate solution was to make it as simple as possible, whoever has got the most money gets the frequency; and I don't understand the rationale in that. I mean, I understand the economic rationale, but if you say it's the public frequency, why did you do that. (BCobb512, pp. 33-34)

Frank Blount also believes that the FCC is focused now on money with little consideration of the "small business guy".

And the FCC, I think that this whole thing has been geared to boy, let's get the billions of dollars. But, what have they done to the small business guy? They have shut him completely out of the market. (FBlount153, pp. 23-24.)

Carl Davis shared more of his feelings about the impact of auctions on the “rank and file.”

Really, in my opinion, auctions are illegal...because the airwaves belong to the general pops, the general population in the United States. And why should you have to pay the Federal Government? It all belongs to the people. And . . . I don't [think] we should have to pay for those licenses. We never paid. People never paid prior to this. So essentially what happened, the bulk of the licenses were given away to people. And then all of a sudden when you bring in the rank and file, more or less, then they start charging (CDavis322, pp. 17-18)

When the C-block auction finally took place, the result was super-inflated prices driven by a few supposedly well-financed bidders; and the belief that this was the last real chance for entrepreneurs to get a meaningful part of the wireless spectrum. The A- and B-block auctions, which had already put spectrum in the hands of the large companies, had taken place. Whatever advantage that was expected to accrue to the “entrepreneur block” by being first to market had been erased when the C-block auction was delayed.

Brian Fontes, a Senior Vice President at the Cellular Telecommunications Industry Association (CTIA), offered his perspective on the viability of C block licensees given the timing of their market entry.

I don't think the Commission did small businesses any great favor with the C-Block; [the C-block license holders are] the last to market - the small business, women-, minority-owned, Telco-type businesses, which were originally stated under the auction authority, and Adarand kind of wiped that out. And now it's just a small business exemption or a small business category. I mean, they auctioned off first the A-Block, then the B-Block, then the C-Block. So in terms of when these blocks of spectrum become available means that the other blocks – it's kind of last to market. And I think anybody that's last to market will have a more difficult time – one, raising capital and two, competing. (BFontes524, p.11)

C Block licenses sold for considerably more money per population covered by the license than the A and B blocks. Many applicants either dropped out of the process early, were able to afford only much less attractive secondary or tertiary market licenses, or considerably overbid for their licenses thus rendering their business plan uneconomic. Therefore these C-Block business plans became unattractive as a financial investment either for conventional lenders, equity partners or vendors.

Many C-block licensees have been unable to meet their installment payments; many have filed for bankruptcy. In either case, they have had to return their licenses to the Commission, per the auction rules. Some C block licenses have already been reaucted. Another block of licenses is scheduled for reauction on December 12, 2000.

Mateo Camarillo, a Hispanic wireless licensee, whose experience with comparative hearings was presented above, also shared his disappointing auction experience with us. His story is illustrative of the stories shared by many other C block participants.

When I became aware of [the C Block] and I found that there was receptivity to those suggestions [about preferences for minorities such as bidding credits and installment payments], and they became policy, then I decided to shift focus and I left the administration of running the radio stations to get involved in PCS and formed a company, . . . Integrated Communications Group. And we then were successful in getting investors and other parties to commit to work with us [prior to the beginning of the auction].

Anyway, what happened is the Supreme Court ruled on a case called Adarand vs. Pena, and after that ruling came down we lost millions. All our investors went away. All our investors went away. Because [with] the FCC's interpretation of the ruling, the Supreme Court Ruling did not say that you could not have those [minority] programs, it said you had to have a justification, it be on a narrow basis, but the FCC just threw out everything and so that's why our investors went away.

And when they in fact promulgated new rules later that year, we had committed so much time, so much energy, we went ahead and participated on a reduced scale. And despite the fact that we lost millions from our investors, we just scaled down. However, we ran into the same problem that we ran into in radio broadcasting, being in secondary and tertiary markets, we subsequently found we did bid and prevail in the auction both the C Block and F Block and obtained 11 licenses. However none were, and our strategy was along the [U.S. – Mexico] border because that was our niche, that was our strength is marketing and reaching the Hispanic market which is on both sides of the border, and we thought that gave us an advantage over you know Joe Doe company that didn't even understand that community.

However, we had the Next Waves of the world who outbid us and drove the bidding prices out of sight, so we had to drop out in Corpus Christi, in Brownsville, in markets that were important, and so we ended up with tertiary markets.

The problem that we eventually found out is that it was very difficult to attract investors [and to get] the attention of suppliers, the Motorolas of the world, the Qualcomms of the world, in secondary and tertiary [wireless] markets. So that was another huge problem and so we're now currently in escrow to sell our licenses because we can't raise the millions needed to [make installment payments on the licenses or build them out], that we had before Adarand.

We had everything lined up. We had manufacturers. We had investors, we had all kinds of things. But we had so much invested in time and energy we thought that we could still make it work on a smaller scale; but we subsequently learned the hard way that people aren't interested in Timbuktus of the world. Which is where minorities tend to end up

because they don't have the capital, they don't have the wherewithal to go public, to have the critical mass to have this staying power. (MCamarillo375, pp. 21-22)

While few interviewees that were involved in the C-Block auction expressly talked about the benefit of being able to pay for their licenses using installment payments, it was apparent from their comments that this program encouraged them to participate in the auction process. The difficulties for most arose, however, with the delay in the timing of the C-Block auction due to Adarand.

As was the case with Mr. Camarillo above, lenders and investors lost confidence in the C-Block applicants and generally decided to withdraw their support. Furthermore, when the auction finally did take place, the bidding was very active, with prices escalating beyond the point of economic prudence. Many bidders, given their lack of sophistication with the industry and financing in general, used all of their available money to make the license down payment, perhaps naively expecting that since they had time until their first installment payment they would be able to raise the needed capital from outside sources. With prices for the licenses generally being higher in most markets than their business plans could accommodate, it became virtually impossible for licensees to raise the capital needed to build out their systems and make their installment payments on a timely basis. Several licensees have defaulted on their payments requiring them to forfeit their licenses.

(j) Interactive Video and Data Services (IVDS)

The FCC auctioned Interactive Video and Data Service ("IVDS") and targeted this spectrum to small, minority, and women-owned businesses. Many interviewees stated that, during the IVDS auction, they came to believe that certain necessary technology was available and carried the imprimatur of the FCC. In fact the technology did not exist and many have been unable to make use of their licenses. Realizing the problem, the FCC suspended the requirement that license installment payments be made. In some cases the FCC has refunded the installment payments made to date by the licensees in exchange for the return of the license. However, the down payments made by the winning bidders remain in the hands of the FCC.

Nancy Douglas, an IVDS licensee, talked about the basic problem with this spectrum.

Interactive Video and Data is what it was called, but that name now has gone by the wayside. Now they just call it 218-219, because it certainly is not interactive video, it never did do that, could not do that, [even though the FCC] said that it could. It turns out that the equipment, the amount of spectrum which is 1000 mhz of spectrum, will not even do what they said that it will do. You need a lot more spectrum to be able to do that. You need really broadband, you know. So, even that was incorrect, which is basic engineering. You know, which again shows that the FCC did something that was totally wrong. And the FCC has refused to take any responsibility for that. (NDouglas155, p. 9)

Carl Davis, who holds five wireless IVDS licenses, among others, explains the financial impact on him of the IVDS auction process.

I was a winning bidder on five licenses in the IVDS . . . and subsequently put 10% down. And at that point in time, I think virtually everyone who had bid for those licenses realized that the company who had stated that they had the equipment to operate at those frequencies did not have the equipment. And at that point in time, virtually everyone who had outside financing, the financial community backed off and left us high and dry.

. . . I had deposited for the initial down payment something like \$272,000. So then the financial backing that I had at that point in time decided to back out and left me dry and I couldn't come up with the other \$272,000 for the [other half of the], I believe, 20% down. . . . A lot of people got collared. I don't know the numbers totally, but a number of people did. . . . I had used my own funds for the initial down payment, but I had backing for the additional ten percent and the subsequent payments - I think it was an additional \$3 million. [I had] \$272,000 [of my own money in the deal].

The Federal Communications Commission kept [my down payment]. . . . Since I didn't make the additional 10 percent down . . . they claimed that I did not uphold the agreement, and, therefore, they confiscated the license. The FCC's position has been, and still continues to be, we should have done due diligence [on the equipment and the spectrum]. And I think that's a cop out because the Federal Communications Commission is the one who incessantly tapped onto, Answer TV is what it was called, stating that they had the equipment, and the FCC was touting this around in the newspapers and through their correspondence with us. That they're equipment essentially did exist.

However, in further research, we found that the Federal Communications Commission did not even check to see if Answer TV had the equipment. They issued the licenses based [on technology that] . . . was hypothetical.

Altogether, with respect to IVDS, I spent a total of a half million dollars - in developing my system [with QVC] that I thought was there, hiring people to write things for me with respect to how we were going to market this thing; paying attorneys; and doing research of all sorts. (CDavis322, pp. 1-3, 11-12)

Mr. Davis continued on to conjecture why, with the failure of IVDS, the Commission will not return licensees' down payments.

So I'm in contact with a lot of licensees. And they're complaining. You know even though they made a second down payment and a few installment payments, they're saying well, how come I can't get all my money back? You know, what's precluding the Federal Communications Commission from giving all my money back? There's no reason for it. And come to find out there is a reason. And the reason is this - a company called Next Wave.

[They] (p)ut down half a billion dollars [for licenses in the C-block auction], on the licenses they bid for on PCS, I think it was called. And they didn't come up with the additional half, which was another half a billion. . . . So they are in default. Now because they are in default, and we're in default, the FCC doesn't want to necessarily give our money back, our down payments back because if they do, it would set a precedent and then they would get their money back, or in this case, Next Wave is attempting to, they want their down payment, but the FCC wants to really confiscate that fine and put it back on the market because now the licenses are worth about ten billion. So they can make a lot more money. And it's become a money hungry business. (CDavis322, pp. 26-27)

Mr. Davis also reports that he has finally found a use for IVDS and the accompanying technology to make it operational. However, since he failed to pay the second half of his down payment, as reported above, the FCC has confiscated his license and is leaving him without any way to recoup his personal investment.

This is the public notice, [the Order], to IVDS people (and we are called 218-219 mhz service): . . . they tell you how to get your money back, that is your installment payments. If that is the case, or they give you another option, you can go ahead and continue to [pay on the] installments, and they will commence 3 months henceforth, or you can request a return of your installment payments, or you can pay off the entire loan. Now I have proposed to pay off the entire loan... But they say I don't own the license because I didn't put the additional 10% down. I have found and a number of other people have found that we can utilize the license for digital information data transfer. So now the license would at least be able to get some of our money back. And I think the price I paid was close to \$4 million, for the license totally, three point seven, three point eight, something like that. I could [earn] that money back in a period of five years.

I have gone out and I've turned over rocks and I've come up with a financing source. And they are willing to pay the FCC off. I have letters to that effect and I've sent the letters to the Federal Communications Commission and given them an opportunity to check these people's credentials and background and make sure they do have this cash; and they still deny me the opportunity to come back, give them the 10% down and pay full price for the license. (CDavis322, pp. 28-29)

Mr. Davis concludes by sharing his perception of how the FCC specifically marketed the IVDS licenses to the small, women- and minority-owned business communities. He feels that these communities were "set up" by the FCC.

Well, this is hypothetical of course on my part. This is what I see happened with IVDS. I think that, it looks like to me, now this is strictly speculative, because I have no evident[iary] proof, the Federal Communications Commission set up the minority community. That is, they touted these IVDS frequencies and spectrum to be the greatest thing that happened in the world since White bread.

And what they did was they made great efforts to reach into the community, into the so-called minority community to get them to apply for these licenses. . . . Thirty-four percent of those [who] won the licenses were of that nature [small, minority- and women-owned businesses]. Hey, really, [the FCC] just touted it like it was a great thing. You know, this is something that it gonna be a breakthrough for the so-called small business person, minority individual, and females. That this is going to be the opportunity for them to get a break in the communication industry, which will render them wealthy, essentially.

And we're gonna give them this chance to do this with this new technology and new ideas and blah, blah, blah, and they went on and they put it in the Wall Street Journal. It was in the Washington Post. It was in every newspaper I ever had, they sent out little brochures, they did everything they could to reach into the communities to get people to bid on these things. And they did it. They turned around and left a sour taste in virtually everybody's mouth. (CDavis322, pp. 33-35)

(k) Abuse of the System

Ownership programs that were designed to benefit minority- and women-owned businesses were sometimes abused by White men using women and minorities as “fronts” for their applications. They would specifically recruit women and minorities to pursue licenses using FCC minority and female programs and credits, but lacked the good faith intentions to include their “partners” in meaningful ownership or decision-making positions.

Alternately, believing that women and minorities did not have the “staying power” to put up a protracted fight for a license, other groups of White men would file applications when they believed a woman or a minority had an excellent chance of winning a license, fully expecting that sooner rather than later the woman or minority applicant would pay them off to withdraw from the selection process. This scheme was referred to as “greenmail”.

Some minority and women interviewees recounted instances when they had to respond to multiple appeals of the FCC’s award of their license. Carl Davis, the study participant who encountered the IVDS difficulties above, shared his story of being greenmailed in his bid for cellular licenses.

[The people who contested the awarding of the cellular license] . . . were two people out of Kentucky. [Their] last names were Peter and Moon. And then there was a so-called committee out there called Committee for a Fair . . . Auction, or something [like that], I forget exactly what their names were. (T) hose were the people that were involved. And we were what they referred to as “greenmailed” at the time. Meaning they were using a technique that the FCC allowed to take place, which was nothing but Blackmail—that is anybody could file a petition to deny a license against you for whatever reason they may have thought they could have done it for.

And it's referred to as greenmail, in the sense that where it was a money-making, illegal in my opinion, concoction of somebody out there in the hyperspace or whatever you want to call it. Because if you didn't [pay them to go away], you would have to go through a hearing process at the FCC and you [would] have to secure lawyers and you [would] have to do all the things involved.

So it costs you a great deal of money just to get to that point in time, get your license awarded to you... They chose a lot of people. I wasn't just the only one. (T)hey [filed a number of complaints]. They went through an entire listing against those they felt probably would pay rather than fight. One guy was, I forgot the first names, but I can remember the last names because they were substantial to me at the time. Peter and Moon, and they were from out of Kentucky.

I ended up paying them a million dollars... Because the FCC was going to carry this thing, and carry it out for a long period of time, so I just paid them a million bucks... I spent a million dollars to pay Peter and Moon, they got \$500,000 a piece. The Committee . . . for a Fair Auction, something to that effect, they got \$168,000 I think it was. And the legal cost of all of this came to, because I had a contingency contract with the attorneys, they ended up getting \$700,000. So all told between Peter and Moon, this Committee for Fair Auction, my lawyer and his marketing firm, who ended up getting \$750,000, so all told it was close to \$2 million dollars. (CDavis322, pp. 12-15)

(I) Inferior Licenses

Whether it was late market entry (in both broadcast and wireless), insufficient funds for the purchase of larger market licenses, or the perception of brokers and sellers that small businesses, especially minority businesses, couldn't afford the more powerful signal stations, small, minority- and women-owned businesses frequently ended up with inferior properties. In the interview process, we found this with minority-owned businesses more than any other demographic group.

Broadcast licensees deemed the quality of their licenses as inferior if they were in small, less populated markets; if their signal strength was weak or spotty because of geographic terrain; if they suffered interference from other stations in the area; if they had their AM station at the 1600 kHz and above, or if they were daytime-only AM stations. Inferior wireless licenses included secondary and tertiary markets or spectrum for which no viable technology exists, such as with IVDS.

As one might imagine, it is more difficult to achieve and maintain profitability with inferior licenses. Further, anything that the FCC does to limit these licensees' ability to offset the economic deficiency such as denying requests for additional power or grandfathering in older more powerful stations when rules regarding frequency interference are changed creates a further burden.

Dale Gehman, a Native American radio station owner, offered his opinion that there are "two sets of rules" – one for new stations and one for the older stations whose signals create interference but who are grandfathered in under newer, more stringent FCC regulations.

It's those that were "the power to be" years ago, and their level of what they're operating at has extreme interference, but that's okay, they're "grandfathered". But if you do a new facility, a new group, try to do something for their community, "oops," you got to meet these extreme stringent rules. As far as minorities getting in the market, there should be one rule for everybody. If this certain contour is interference, then by God it should be for everybody. And if that means lowering power on the old stations, so be it.

Or at least go to what the worse condition is in the country, and that's the standard, because the spectrum's used up. If they were to say, okay, here's the rule, because here's what the grandfathered stations are operating at and everyone can now operate at this, then it opens up the spectrum for many more stations.

Of course the existing broadcasters are not going to like that. They're going to say, "hey, that's terrible, there's new stations coming on." But you're holding people to two standards. You're saying, okay, minority groups, we'd like to have you in broadcasting, and we'll help train you and we'll do our EEO programs, but you really don't want to be in ownership because we're going to limit you because you have to meet these new rules while we operate under these old rules, that really there's no parity at all. It just does not make sense to me, and I don't really understand. . . . It's not right. (DGehman132, pp. 25-26)

We already shared Mateo Camarillo's story about the C-block auction where, because his funding dried up when the ownership programs were eliminated due to Adarand, he had to significantly scale back his bidding and as a result, acquired licenses in inferior secondary and tertiary markets.

. . . but we subsequently learned the hard way that people aren't interested in Timbuktu of the world. Which is where minorities tend to end up because they don't have the capital, they don't have the wherewithal to go public, to have the critical mass to have this staying power. (MCamarillo375, pp. 21-22)

We're also reminded of comments made by Cellular Telecommunications Industry Association's Brian Fontes about C block small businesses being last to market and therefore having "a more difficult time – one, raising capital, and two, competing." (BFontes524, p.11)

Nancy Douglas, owner of IVDS licenses, shares that ". . . there are no small minority, small business opportunities anymore. They're gone. There will not be any. [E]verything from now on that they're selling is really expensive. You know, it's like the only thing that they have left is stuff way, way up there on the (wireless) spectrum. And that's stuff's really expensive to construct. (NDouglas155, p. 19)

(m) Decision-Making and the Role of Key Market Participants

Almost all licensees acknowledged that they needed legal and often engineering representation before the FCC. Although fees for these professionals is often very expensive, most interviewees acknowledged the value. It was a challenge for many, however, to pay Washington, D.C. prices for their professional advisors. Additionally, several study participants spoke of the relationship of key market players, primarily attorneys, to the FCC and its decision-making function. They shared experiences where it was their perception that some licensees, or prospective licensees, were receiving more favorable treatment than one would expect given their application's merits.

Others spoke of those intermediaries who were all too familiar with the rules, regulations and inner workings of the FCC "gaming the system" and causing delays in the process for competing licensees.

Dennis Miller, a wireless license holder, acknowledges the importance of good legal representation before the Commission when he said "[Our law firm is] experienced and understands the [FCC] well. [It] has relationships with the Commission staff, which is vital. (DMiller147, p. 8)

Dale Gehman sees it from another perspective. He shares an experience where he perceived that others were gaining advantage in ways that were expressly against Commission rules.

One thing that really bugs me about the rulemaking branch is that there is a great deal of contact by certain [non-FCC] people that I am convinced helped determine how some of the rulemakings [came] out of there. I'll tell you, there's some more stuff going on behind the scenes.

[A broadcaster I know] was on the phone to the rulemaking branch every other day. And, it's like, those are closed proceedings. You're not even supposed to talk to those people up there. [the FCC] allow[ed] contact in there that should really be prohibited, and I saw this work several places in Alabama [where] I know that there's no way he'd have got[ten] that pulled off, except that he just really befriended the people in the rulemaking branch and just stayed after them and after them, on the phone calling up there every couple days . . .

I don't understand how some people can get things like that done, and then we try to follow everything exactly the way it's supposed to be and we would get [our application] kicked out with the least little thing. I mean, it was just like these little tiny areas in dispute. Our [applications] got kicked out. There'd be other broadcasters around us. They would have major problems with their applications. Their attorneys would go over and sit with the Commission, and they would just set them aside. And we would get kicked out. We would have to go back in the whole proceeding. (DGehman132, pp. 19-23)

Robert Fink talks about trying to use the Commission's web site to help defray legal fees.

I have to spend money on lawyers and research engineers to find if there is something coming up. I mean, go to [the FCC's] web site, and everybody now says, well, everything is available on their web site. Trying to find something on there is nearly impossible anyway. And 90% of the time, when you go to it, it tells you "unavailable at this time"... it just never seems to give us what we want, and, half the time it is under construction and that type of thing. Their maintenance on it is horrendous. And if that could be maintained, that would save us a lot of time but also a lot of [money] ... we have to call our attorney at \$150 an hour to find out stuff. (RFink235, pp. 26-27)

Art Gilliam talked about his experience in the comparative hearing process where he perceived that the outcome of the hearing was "politically influenced."

I have participated in a comparative hearing process . . . This was related to a television matter that took place involving the RKO license . . . there was here in Memphis and . . . some people here put together various groups that competed for the license; and I was a part of one of those groups, but not the leading part of that group in terms of economics. No [we were not successful in getting the license], and I think that the party that was successful probably had political connections because I don't believe that based on the criteria that the FCC set forth that that party would have been able to otherwise win the license, but they did.

They were not local, and it had some considerable differences, based on ethnic criteria. So my conclusion from all of that was that politics does indeed play a considerable role in the outcome, although probably certainly not at the staff level of the FCC. . . . I am personally and totally convinced that the outcome was politically influenced.... when you look at the criteria, you could readily [see] that their integration of management into ownership was not at the level of several of the other groups, they were not local, so several things.

In fact, the lawyers we were using, who are themselves well-connected lawyers, initially told us that they were assessing the groups and said this group basically didn't have that good of a chance that there were about three other groups that really were the main competitors and we were one. Later on, these [same] lawyers, . . . later one came back and kind of hedged a bit and talked about how this [other] group had excellent opportunities. I just believe that they had gotten inside information about this group; and it's not something I can demonstrate by proof, but it's just a matter that I don't believe that, and I guess, subsequent political developments in the country that I've come to be aware of, have convinced me even more so that money can buy licenses.

. . . I don't have a perception of the FCC at its . . . staff level engaging in discrimination. I have not experienced that personally. At the same time, I think at the Commissioner level, which is an appointed level, there is political influence that can be brought to bear down through the organization and I think that's what happened in this case. Which is

different than discrimination, but it's discrimination in the institutionalized sense in that most that have political influence are less likely to be African American. (AGilliam117, pp. 13-17)

Other than the FCC, the media broker appears to wield the most influence over who receives notice of station purchase opportunities. David Honig, Executive Director of the Minority Media Telecommunications Council (MMTC), explained that through the years civil rights organizations have complained *"that minorities weren't hearing about stations for sale until the deal was announced."* When stations were offered to minorities, Mr. Honig explains, the properties were often troubled or technically inferior. Dr. Benjamin Hooks, the first African-American FCC Commissioner tried to correct this situation through a ruling at the FCC. He was not successful. David Honig, who worked for one of the organizations that filed a complaint, explains what happened.

What Dr. Hooks was responding to was complaints by some of the civil rights organizations ...that minorities weren't hearing about stations for sale until the deal was announced. ... that when minorities would get called saying a station is for sale, it was often a station where the owner was desperate that they would even consider minorities and the station was frankly technically inferior, it was on an environmental site, or something was wrong with it. But the really juicy deals, minorities weren't hearing about.

One difficulty that brokers had often pointed out was, "Well once you start having some of the sales announced publicly and others not, people will move around. It will be a competitive disadvantage if we have to announce it and they don't close. Then our staff will move over there and we're sort of selling the continuity of the staff as an asset that we're selling that affects the price and sometimes when formats change, people want to move and they note that it is and so forth, a good point.

[Dr.] Hooks' answer was "Fine, let's have a level playing field." Everyone who sells a station has to announce the sale 45 days before they can sign a contract on the sale. That way, everyone equally will know what's for sale, and everyone will have a chance to bid openly. And let the one with the most money win. And that was a radical idea because it didn't get any other votes. And the reason it didn't get any other votes, to be fair, was that some of the Commissioners who opposed it felt that then everyone will have their key assets moved somewhere else and depress the value of the industry.

But there was no answer to it in terms of, well, what else are we [going to] look at that might work to open up this brokerage business. Are you going to have any hearings? Because, [Dr.] Hooks was calling for some remedy for discrimination by brokers. This particular idea was one, but then the Commission just dropped the ball and well, we'll deny this idea and not look at anything else either. There was some boilerplate in it that, well, we think this is an important problem. We'll continue to look at it. They didn't. (DHonig521 #2, pp. 19-20)

(n) Ineffective or Unaffordable Advocacy

Many study participants expressed frustrations over their inability to afford a cadre of communication attorneys, as the large group owners and telecommunication companies do, to represent their interests before the FCC and Congress, to respond to rulemakings and to move licensee requests for action quickly through the various processes and Bureaus within the Commission. Advocacy by members of the communications bar provides more opportunities for access to key FCC decision makers.

Several licensees indicated that they had neither the time nor the financial resources to be able to spend time in Washington, D.C. representing their own interests, lobbying members of Congress and meeting with FCC staff.

Ronda McKenzie, an owner of multiple wireless licenses, shared her perspective on the issue of small business advocacy before the FCC.

Well, I'll tell you the biggest problem is these big carriers have tons of money to have 20 lobbyists up on the floor up there with the FCC people and, you know, [the Commission] grease[s] the squeaky wheel. And small businesses and minorities don't have that kind of money, you know. We can't – I mean, we're worker bees. We're out here trying to make it happen and we certainly don't have the funds to pay professional lobbyists to be sitting on the floor to protect our best interests. And there's nobody there to protect us. And no one really is there to represent our interests. And we don't have the money to do – and we can't fight AT&T and Sprint, you know. (RMckenzie158, p. 13)

To assist the small, minority- and women-owned businesses, the Office of Communications Business Opportunities (OCBO) was established. According to Frank Montero, former Director of OCBO, the Office is “charged with helping small women and minority owned businesses enter into the telecommunications and technology marketplace to try to address barriers that they may be facing in terms of trying to get into that marketplace, either because they are having difficulty obtaining access to capital, or they may have difficulty obtaining information about Commission proceedings that they may be interested in participating in or information on how to apply for a license.” (FMontero509, p. 1)

Mary Helen Barro, a former owner of radio stations and former President of the American Hispanic-Owned Radio Association, explained her perspective, which was echoed in part by others.

We went to Congress—well Congress, well, forget Congress. They didn't care about the little people. What they cared about and what they've always listened to are their big contributors, which [are] the major corporations, and the major corporations had a lot of money and they wanted in. ... I was pretty much up on what was going on in the industry. I also had very good and expensive attorneys that kept me apprised. But if you did not have the luxury of having an attorney stay on top of things for you, you basically were left out of the loop. You had to spend a lot of money because believe me, the FCC

never told anybody anything. Their system of notification ... is really one that is structured for the large companies that have the money to have attorneys that constantly stay on top of what is going on at the FCC. For the small broadcaster, who is on limited funds, forget it. You're never going to find out anything. (MHBarro190, p. 7-9)

Henry Rivera, having worked with the FCC in multiple capacities for years, noted that “it’s very difficult” for small, minority- and women-owned business. “They really don’t have much of a voice [at the FCC] and they ... don’t have the same stature or muscle power basically that some of the bigger operations in town are able to muster. (HRivera516, pp. 14-15)

Toni Cook Bush highlighted another problem which small businesses, especially new entrants, can be confronted with when trying to secure representation before the FCC.

“It is very hard to find engineers and attorneys that don’t already represent one of these other guys, so you find that minority companies, and I think female companies and smaller companies go in at a disadvantage because there’s nobody for them to hire. So if we could hire another engineer who was better known at the FCC, we would do it in a heartbeat. But we can’t find anybody who doesn’t have a conflict.” (TBush378, p. 19)

To help eliminate some of the reliance on communications attorneys, the Commission and OCBO have worked hard to make access to information and the license application filing process more user-friendly through the use of the Commission’s web site. Frank Montero talked of this transition.

I think ... there is clearly a movement afoot at the Commission to try to break that reliance [on Washington, DC-based FCC attorneys] because obviously people who can’t afford an FCC lawyer in Washington are left out. . . . [Information technology and the Commission’s web site] has certainly broken the inside-the-beltway monopoly on the communications law practice. And perhaps this is the first step of the evolution is that now, ... if you look through the ranks of the Federal Communications Bar Association, it’s amazing how many communications lawyers are outside of Washington.

... Well, there is no way those people could have existed ... five, ten years ago. I mean ... you had to be able to walk over to 1919 M Street to meet with people, to get copies of things from the reference room, to go to the commission meetings. I mean, if you couldn’t do that, make the filings, you just could not have practiced that type of law. The fact that somebody in Little Rock, Arkansas can watch commission meetings because it is being web cast on the computer or make their filings through the electronic filing system, or get any ... information about the status of an application or anything on the computer, it is amazing. (FMontero509, pp. 30-31)

And yet, a web site does not replace the effectiveness usually associated with well-paid attorneys and lobbyists.

7. Education, Training and Experience

The study found that a number of minorities who were in either the broadcast or wireless industries, or both, had significant educational background and work experience, in almost all instances, greater than for their White male or female counterparts.

We interviewed, for example, several people who had undergraduate engineering or broadcasting degrees; one minority woman had a Ph.D. in public policy and had attended a small business executive education program at Harvard Business School; a number of people had law and either undergraduate or graduate business degrees from various well-known universities and colleges; one person had been a senior executive at the investment backing firm of Goldman Sachs; another had been in charge of international advertising for Proctor and Gamble; a third had been publisher of a weekly industry newspaper for the Hispanic radio market; and yet another had a masters in social work, had started a school of social work, had been a successful multi-unit McDonald's franchisee, and a university professor.

While education did not necessarily translate into market success, the kind and quality of prior work experience had an enormous impact on one's ability to raise significant sums of debt and equity financing which ultimately translated into opportunities to purchase stations in the secondary market. For those minorities who experienced greater access to capital than was usual for minorities taken as a group, the common denominator was significant private sector work experience, either in finance, marketing or broadcasting. With this background they were not only able to capitalize on their successful track records but also on their network of contacts to assist in the raising of financing and access to deal flow. Often prior business colleagues became private or venture capital equity partners or investment bankers and lenders.

Especially in today's broadcast industry climate of consolidation, extremely high station prices and far more scrutiny of management expertise by brokers, lenders and venture capitalists, good solid private sector experience is an enormous benefit to both the new entrant and those licensees looking to increase their holdings.

Additionally, many station owners we spoke with had, at one point, been station managers and/or sales managers for others. There is no question that this background was helpful to them when it came time to deal with the day-to-day operations of their stations. However, what was generally lacking in these individuals was knowledge of finance, deal making and business plan development, all qualities that enter into a media broker's evaluation of a prospective buyer's "competency to close."

The findings above point to an increased need for small businesses who are new broadcast entrants or those who currently own stations not only to receive sophisticated business training but also to have access to career tracks which will enable them to gain the kind of experience that opens the doors to opportunity in today's market place.

Many industry-related training programs are available that are not connected with specialized college and university departments. For example, The Minority Telecommunications Development Program (MTDP), under the auspices of the Department of Commerce's National Telecommunications and Information Administration (NTIA), offers training in broadcasting through its ComTrain program. S. Jennell Trigg, a communications attorney, founded and developed The Telecom Opportunity Institute, a not-for-profit corporation which "*promotes career opportunities, employment, and ownership in telecommunications for minorities, women and at-risk youth.*" And starting in September 2000, in conjunction with the National Association of Broadcasters Foundation, Diane Sutter, a successful television station owner, will be presenting a year-long broadcast-related "executive MBA" program for thirty students. Funding has been raised for a three-year pilot program, with specific financial assistance available for up to 15 women and/or minority broadcasters each year.

Classroom training aside, nothing can replace solid on-the-job training. In this study we found clear evidence that prior significant industry-related work experience was critical for access to both capital and opportunities. The failure of the FCC's EEO policies through court action and lack of enforcement severely curtailed the development of a cadre of women and especially minorities who could have gained the experience necessary and been ably prepared and ready to compete in the post-Telecom Act world.

8. Perceived FCC Climate

Several study participants expressed concern over their participation in this study because they did not want to become too visible to the FCC. There were a few study participants who chose not to have their comments taped or transcribed or otherwise asked that their comments not be attributed to them. They felt that if they publicly criticized the Commission they would be opening themselves up to such things as delays and unfavorable rulings, both of which would be costly. In a few instances, interviewees shared experiences in which they were instructed by their legal counsel not to push certain items with the FCC because by doing so they might imperil a favorable decision.

When queried, virtually no licensees were aware of any formal complaints that had been filed against the FCC. Dorothy Brunson, an African-American television owner, offered this explanation.

No, I don't think anybody has that kind of courage. One of the things that people are always aware of is that you've got to live in this environment, and so you can't cut the hand off that's feeding you. You may not be getting a belly full, but you're not starving to death. So, you're caught in a kind of a Catch-22. You don't want to appear persona non-grata, and do something that's going to make you stick out like a sore thumb.

And so you kind of keep your mouth shut and you try to continue to push and shove without making a tremendous amount of noise. Because, you know, you have to survive in this business or you get out. But you can't do both. Especially if I were Preston

Padden (a broadcasting industry lobbyist), or I was any other of the major lobbyists, I could say a lot of things that they say all the time, you know, as it relates to ABC, or relates to the cable or broadcasters or NBC [or] National Association of Broadcasters. But we can't say those things, because we're too small, we're too vulnerable. So do we file? No, nobody in their right mind's going to file. (DBrunson105, p. 21)

Concerns of this nature conceivably have an impact on small, minority and women licensees' willingness to "lobby" the FCC or Congress for programs, regulations and/or rulings that could ultimately either lower barriers to entry or increase opportunity for business growth. Without the resources to hire lobbyists on their behalf, their discomfort with approaching the FCC or Congress muffles the voices of those least likely to be heard.

V. IMPLICATIONS OF THE FINDINGS

Our detailed findings of the experiences of small, woman and minority-owned businesses provide us with the knowledge and perspective to form broad conclusions in nine major areas concerning past, present and prospective market entry barriers, as follows:

A. Capital and Markets are the Drivers

The present broadcast and wireless industries and their regulatory structure, perhaps more than at any time in the history of the FCC and the industry, is, by design, responsive to capital and market forces. Given a well documented, established and accepted fact that (in increasing order of severity) small, women- and minority-owned businesses are capital deficient, there is little wonder that participation by such businesses in FCC licensed industries is alarmingly low, and, by all appearances, on a steep and severe decline.

In the words of one licensee interviewed, we now experience “[what] blind reliance on market forces brings you to.”

B. Absence of Critical Mass

As to women- and minority-owned companies in broadcasting, timing has been everything. Historically and systematically excluded from industry participation due to overt and passive discrimination on the part of local communities, the broadcast and advertising industries, secondary market players, and the FCC, modest inroads were made after 1978, with the adoption of minority and female ownership programs and credits. Their modest gains through the mid-1990s had hardly the opportunity to take root, and grow sufficiently strong, in order to buffer them from and increase their chance of surviving deregulation.

Powerful industry countermeasures, nurtured by Congress and the Courts, and half-heartedly opposed by the FCC, in rapid succession undid a less-than-two-decades effort to redress nearly seventy years of barriers to entry for women and minorities. The sequence of rollbacks of minority and women ownership programs and credits, industry-wide deregulation, industry-wide consolidation, even, the absence of accurate, up-to-date statistics documenting the full impact on women and minority participation, have combined to present significant barriers to women- and minority-owned businesses being significantly represented in broadcast and wireless ownership.

C. The Role of the FCC and Congress

As stated by one interviewee, “there is something besides the market in the world ... if unresolved market forces were to be the criteria under which all would be conducted, why does the Constitution give Congress the power to regulate commerce?”

As a large bureaucracy with wide-ranging responsibilities, the FCC presents myriad faces before the public. When it comes to small, women- and minority-owned businesses, the FCC too often has been perceived as being detrimental to policies, procedures and enforcement that would enhance participation by small, women- and minority-owned businesses.

This study revealed anger, frustration, disappointment, and resignation on the part of numerous small, women- and minority-owned business owners at Congress and FCC actions that have erected and heightened barriers to entry and growth. Their concerns included:

- The FCC “looking the other way” when confronted with Jim Crow discrimination in broadcasting in the American South;
- The perceived lack of strong, corrective action by the FCC on EEO and other discriminatory policies perpetuated by “big industry”;
- The FCC’s acquiescence to the distribution of licenses in the secondary market where information and capital are rationed within “old boy networks”;
- A long-standing give-and-take relationship between organized industries, e.g. broadcasters, local and long distance telephone service providers, and the FCC;
- Routine FCC acquiescence to interests in the private sector, Congress and the Courts opposed to the concerns of small, women- and minority-owned business;
- A perceived lack of responsiveness historically to advocacy by small, minority and female business interests;
- The perception of a willing acquiescence to the abandonment [by Congress] of the minority tax certificates and other “ownership programs” without substantive protest upon the earliest sign of judicial opposition;
- The FCC’s support for auctions, despite possible disparate implications of distributing wireless and broadcast licenses to the highest bidder;
- Self-interest, resistance and inertia within the FCC on small, women- and minority business issues;

Leading up to passage of the 1996 Act, advocacy and representation on behalf of small, minority and female business interests before the FCC was considered weak and ineffective, in comparison with stronger, more influential lobbies representing existing broadcasters and large corporations. Fear of reprisal from those in a bureaucracy perceived as being more concerned with future employment with large corporations served to squelch some from louder, more public dissent.

Many interviewees perceive the FCC as contributing to the lack of opportunities and participation by small, minority- and women-owned businesses in the communications market. It is little wonder that many study participants have reluctantly given up hope of prevailing as competitors in broadcast and wireless industries in the future.

D. Discrimination

Discrimination appears to have played an important role as an entry barrier, especially to minority participation in broadcasting, from;

- segregation in the Jim Crow South, legally depriving African Americans and their communities of information, employment and ownership opportunity,
- pervasive discrimination and structural barriers to financing and economic participation,
- pre-1996 Act barriers to entry and expansion based on advantages of size and scale derived under previously discriminatory advantage,
- the post-1996 Act rollback of previous advances made, primarily from the tax certificate program.

A clear majority of women and minority licensees interviewed in the study believed they had encountered discrimination in their attempts to become licensees: in raising capital, in the secondary market, and in operations. As a result, successful licensees persevered, despite discrimination at many turns, and, despite the belief that their experiences would have been significantly easier, if their circumstances had been exactly the same, and they were White males.

This anecdotal study illustrates the complex, intricate and pernicious working of historical bias and discrimination throughout our society. It demonstrates the tenacity of individuals in the face of such discrimination to persevere, to strive to break through in spite of bias. And it demonstrates the difficulty and enormous resources required to uncover definitive proof of the bias that lies within the hearts and behind the actions of some.

E. Bidding Credits in Wireless Licensing

The study participants perceived the bidding credits as a failure even though the FCC used them in the wireless auctions in an effort to enhance opportunities for small, minority-, and women-owned businesses. Few small businesses, and precious few women and minority businesses, found bidding credits of sufficient value to offset the capital resources of large companies in auction contests. The biggest impact of bidding credits, according to interviewees, was to artificially elevate the final price of wireless licenses, with little or no impact, on the eventual result of licenses being issued to small businesses.

F. Relaxation of Ownership Caps

Small-, women- and minority-owned businesses, with a small number of notable exceptions (e.g., Radio One Communications, Z-Spanish Radio, Granite Broadcasting) have been and continue to be driven rapidly out of radio and television media ownership. Nearly all cite the relaxation of ownership caps under the 1996 Act as the principal cause.

With passage of the 1996 Act, nearly every small businessperson interviewed expressed new and substantial difficulties in competing and surviving, with expansion being virtually out of the question. The result has been an avalanche of station sales to dominant national “consolidators.” This trend appears to have impacted all small and local radio broadcast businesses and has appeared to have affected minority broadcasters particularly.

G. Loss of Community Service and Diversity of Viewpoints

This study’s interviewees uniformly reported that small, minority-owned businesses are more integrated, aligned with, and responsive to the local communities that they serve. Their declining participation in broadcast and wireless ownership, it appears, has resulted in a diminished concern for local issues and needs, which has led to a loss of diversity of viewpoints.

H. Potential Loss of Civic Participation, Democratic Values and Freedom of Speech

Informal networks of licensees, attorneys, brokers and others have worked together to distribute and redistribute licenses among those with access to the secondary market for decades. Only recently have a few women and minorities been included in this network.

The interviewees reported that this lack of access to and inclusion in the secondary market network, made worse by widespread discrimination in the capital markets, and the lack of strong, effective government and regulatory intervention, has contributed to the long-standing under-representation of women and minorities in broadcasting.

The present day effect of these conditions, deeply rooted in exclusionary market and regulatory structures and behaviors, create current and future market entry barriers for small, women- and minority-owned businesses of crisis proportions. These barriers result in;

- fewer small, women and minority broadcast licensees,
 - fewer broadcast stations and wireless licenses owned and operated by small, women and minority licensees, and
 - fewer communities served by local and community-based small, women and minority licensees.
-

This impact, especially upon small and minority-owned businesses, as became apparent in this study, was overwhelmingly clear. The result, according to many of those interviewed, has been a dramatic loss in the diversity of viewpoints provided by the nation's mass media, and a concentration of influence and control of the means of mass communication of possibly unprecedented proportions.

I. The FCC is the Public Trustee of the Broadcast and Wireless Spectrum

Passage of the 1996 Act, and the rapid and harmful impact on small, women- and minority-owned businesses as foreseen and testified to by many, calls into question the proper role of the FCC in allocating spectrum consistent with the public interest, convenience and necessity. Questions such as:

- What is the role of the FCC in an era of auctions and consolidation? How does the FCC balance its goal of maximizing revenues with maximizing diversity? Which is the greater public good?
- What constitutes appropriate trusteeship and management of public assets such as radio frequency spectrum? To whom do the airwaves belong? Do they belong to the highest bidder in auctions that will inevitably be controlled by corporations that are nearly 100% controlled by White men?
- Who protects individuals and communities from the excesses and effects of capital and markets without "appropriate constraints" on corporations?
- What governmental body provides protection against anti-competitive behavior in local markets, as the FTC and DOJ provide over national markets?
- In a free-market economy, what is the measure of "appropriate regulation?" Is the current level of FCC regulation insufficient?"

This study revealed a strong linkage between small business, local ownership and the professed core commitment by the business owner to local interest and community service. These values were offered in contrast to the obligations of publicly owned companies consolidating the broadcast industry to maximize profit and shareholder value.

Radio in particular reveals itself in the words of this study's participants to be a uniquely personalized and local voice of the community. This study, therefore, calls into question the meaning and value in our society of public service and community interest.

Frequent mention was made by participants interviewed of "profit taking at the expense of social responsibility" referring to the FCC's sponsoring of auctions to distribute licenses. Has the FCC and the government become "corrupt from greed" as many suggest, exchanging public interest for governmental revenue as its purpose, mission and charter?

In the wake of rapid technological changes and market consolidation, finally, what is the FCC's role in shepherding and leading the protection of our freedoms of speech and diversity of viewpoint on the nation's airwaves? Small, women and minority participants interviewed were passionate in their belief that vital freedoms and values have suffered, perhaps irreparably, from recent consolidations of media power in the hands of relatively few corporate owners.

To the extent that important national trusts are threatened, and possibly compromised, as this study suggests, critical questions are raised concerning the nature of the relationships, responsibilities, accountabilities, and authority between the nation's industries, its legislative and judicial branches, its citizens, and our society.

VI. CONCLUSION

Historically, minorities, and less so women and small businesses in general, have confronted barriers to entry into the broadcasting industry. An anecdotal study of this nature is particularly valuable because it specifically illustrates the difficulties faced by small, minority- and women-owned businesses. This study provides a face and voice to real-life people who have encountered barriers that are all too real. They have faced discrimination in the financial markets, limiting access to capital. They have faced discrimination in their communities, limiting access to employment opportunities and land for communication towers. They have faced discrimination in the secondary market, limiting access to information about and the opportunity to participate in the buying and selling of stations. They have faced discrimination in the advertising industry, limiting access to advertising revenue, the life blood of a broadcasting company. All of these factors have contributed to a disproportionately low number of minority and women owners in broadcasting who have been able to sustain their company's viability and position it for growth.

In the wireless industry, where realistic opportunities for small businesses to participate in acquiring licenses have only been available since the middle 1990s, lack of access to the large sums of capital needed to build out wireless systems has been the greatest barrier to entry. Wireless licensees have encountered the same difficulties acquiring debt and equity financing as those experienced by their broadcast licensee counterparts, causing many of them to default on financial obligations to the FCC, thereby having to forfeit their licenses.

To help mitigate these market forces, both the FCC and Congress have established through the years various ownership programs to increase the opportunities for market entry into both broadcasting and wireless telecommunications for small, minority- and women-owned businesses. Programs such as minority ownership programs in the comparative hearing process; bidding credits in the lotteries; and installment payments, bidding credits and favorable interest rates in the auctions, were established to enhance the probability that women, minorities and small business owners would participate in the FCC's processes for awarding new licenses. The distress sale and especially the tax certificate policies opened up access to the network of sellers and brokers in the secondary market for media properties to the often excluded minority prospective licensee.

Countering these positive programs, Congress and the courts halted what progress was being made in the increase in broadcast ownership by minorities, women and small businesses when in 1995 Congress repealed the tax certificate program and the courts ruled in Adarand, and in 1996 Congress passed the Telecommunications Act of 1996 which deregulated broadcasting and brought on a sudden and rapid consolidation of media properties into the hands of the few. It appears that the confluence of these events, with their collective negative impact on small, minority- and women-owned businesses in the broadcasting and wireless industries, has virtually forestalled any progress that was being made and has, in fact, created a crisis in participation in telecommunications by these businesses. The barriers to entry have been raised so high that, left standing, they appear virtually insurmountable. Minority, women and small business ownership

in these industries is diminishing at such an alarming rate that many we spoke with felt we had passed the point of no return.

While discussing passionately the negative financial and personal impact small, minority- and women-owned businesses are sustaining from these converging forces, the greatest concern by far of those with whom we spoke was the loss of service to their communities, the loss of diversity of viewpoint, and the threat to freedom of speech that the market consolidation in telecommunications was creating. They collectively believed that the mission of protecting the public interest must continue to be served and that market forces left to their own devices would seriously erode that purpose.

The participants in this study generally agreed that programs, such as the tax certificate policy, that provide incentives to sellers and investors to conduct business with specific groups of people work well. Without them, if history is a predictor of the future, the network of participants in the secondary market for licenses (sellers, brokers, debt and equity investors) will continue to do business with people they know and with whom they have previously had successful dealings. Without these incentives, the door to opportunity will remain closed to all new entrants except for the lucky few who come to the table with just the right mix of vision, experience, and equity.

Furthermore, we heard repeatedly that small, minority- and women-owned businesses need a louder voice before the Commission if their interests are to be served as mandated. They are lacking the resources, either individually or collectively, to be strong enough advocates for themselves. Whether it is more authority for the Office of Communications Business Opportunities or an office which helps to expedite applications and licensing for small businesses, these entities have special needs for timely responsiveness and an understanding from the Commission of the issues they confront running a small business day-to-day. As a substitute for presence before the FCC, it is also imperative that the Regulatory Flexibility Act be consistently and seriously implemented, as these actions can serve as the ombudsman for those whose voice is but a whisper.

Lastly, what also became clear through our study is that there are three government agencies, the FCC, SBA and the National Telecommunications and Information Administration (Department of Commerce) that are focused on promoting opportunities in telecommunications for small, minority and women-owned businesses. Yet there was little evidence that much, if any, collaborative effort existed to coordinate these agencies' activities to the benefit of those they are trying to serve. To have these agencies speak loudly, with one voice where possible, before the Commission and Congress would meaningfully strengthen the advocacy these businesses so dearly need.

Without serious and swift dialogue around how to overcome the market entry barriers discussed in this report, there will be little chance for small, minority- and women-owned businesses to enter into and succeed in either broadcasting or wireless telecommunications. It is important that Congress, the courts and the FCC consider the impact that market forces, left unchecked, will have on the public good. It seems that the business of telecommunications has shifted its primary focus from serving the people to serving the pocketbook. It is imperative that a new balance be achieved if the public interest is to be served.
